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IN THE

Supreme Court of the United States.

OCTOBER TERM, ~~1952.~~ 1953

No. ~~874.~~ 25

JACK CORBETT and EL PASO BASEBALL CLUB, INC.,
Petitioners,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, *et al.*,
Respondents.

REPLY BRIEF OF PETITIONERS.

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THE COURT PRESS, 130 Cedar Street, N. Y. C.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 674.

JACK CORBETT and EL PASO BASEBALL CLUB, INC.,
Petitioners,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, *et al.*,
Respondents.

REPLY BRIEF OF PETITIONERS.

The petitioners in their application for a writ of certiorari have presented the sole and precise issue raised by the Court of Appeals for the Sixth Circuit. If this Court will take the opinion of that Court and place it side by side with *Gardella* v. *Chandler*, 2 Cir., 172 F. 2d 402, it will become manifest that the dissent of Judge Chase on the issue of trade and commerce was the only basis for the decision below.

The Court of Appeals, therefore, in agreement with the view of Judge Chase, held that there was a lack of jurisdiction over the subject-matter of the action under the authority of *Federal Baseball Club* v. *National League*, 259 U. S. 200, affg. *National League, etc.* v. *Federal Baseball Club*, 269 F. 681. We are satisfied that if this Court reviews that question, it will necessarily have before it the issue: "Does the amended complaint state a cause of action?" It will

also have before it in their respective applications to the amended complaint each and every statute relied upon therein. We specifically pray that this Court deem the petition made herein to cover the question as to the sufficiency of the amended complaint and of all of the reasonable inferences to be drawn therefrom in plaintiffs' favor.

While its sufficiency has been sustained by the answers given in the Reply Brief to the questions raised by respondents in opposition to the application for a writ of certiorari in *Walter J. Kowalski* v. *Albert B. Chandler, Individually and as Commissioner of Baseball, et al.* (Docket No. 668, October Term, 1952), certain additional grounds urged against the sufficiency of the amended complaint herein may be noted.

In granting the motion to dismiss, the District Court necessarily treated the allegations of the amended complaint as true (*United States* v. *New Wrinkle, Inc.*, 342 U. S. 371). While every favorable inference that must be drawn therefrom leads to the inference of the actual fact that plaintiffs did not know of the agreement between defendant Chandler and the President of the Mexican National League prior to its publication on March 19, 1949, and that they had previously signed the Mexican players for that season, such knowledge would not supply respondents with the defense of *pari delicto* (*Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211).

The allegations of the amended complaint with respect to the substantial income derived by Organized Baseball from radio and television contract are sufficient to confer jurisdiction. *Martin* v. *National League Baseball Club*, 2 Cir., 174 F. 2d 917, merely

denied the interlocutory relief of a temporary injunction. Both the complaint in that action and in *Gardella* v. *Chandler, supra;* Id., 174 F. 2d 919, were sufficient to state a cause of action for treble damages under the Sherman Anti-Trust Law (26 Stat. 209; 15 U. S. C. A. §§1, 2, 3) and section 4 of the Clayton Act (15 U. S. C. A. §15), despite the absence from each complaint of allegations as to the specific sums received by the clubs from the sale of radio and television rights.

The amended complaint sets forth the formation of a cartel in man power between Organized Baseball and the Mexican League (*Timken Co.* v. *United States,* 341 U. S. 593), to plaintiffs' damage. The investigation by the Congressional Subcommittee disclosed similar agreements with independent Leagues within and without the United States (Peter S. Craig, Monopsony in Man Power: Organized Baseball Meets the Antitrust Laws, 62 Yale Law Journal, 576, 606; Hearings Before The Subcommittee on Study of Monopoly Powers of The Committee on The Judiciary, House of Representatives, 82nd Congress—First Session, 1299-1301).

Plaintiffs were deprived by the Mexican Agreement of the opportunities for the mutual performance of profitable contracts with the Mexican players. Such loss of opportunity, even in the absence of negotiated contracts, raises a triable issue under section 4 of the Clayton Act (15 U. S. C. A. §15; L. Hand, *J.*, for the unanimous Court in *Vines* v. *General Outdoor Advertising Co.,* 2 Cir., 171 F. 2d 487, 491, and authorities cited). Plaintiffs have sufficiently alleged the source of their injuries pursuant to the anti-monopoly statutes (*Chattanooga Foundry* v. *Atlanta,*

203 U. S. 390). In *Fleitman* v. *Welsbach*, 240 U. S. 27, and like cases cited by respondents, the corporation did not join the stockholder in a treble damage action.

Respondents have not denied that plaintiff Corbett was disciplined for offering employment to Mexican players in accordance with their rights as defined by the one pertinent decision, from which no appeal was taken, in an apposite interpretation of the Mexican Constitution. This result is in harmony with the construction of the antitrust laws in *Anderson* v. *Shipowners' Association*, 272 U. S. 359.

Virtually every phase of the points concerning the sufficiency of the amended complaint and that of the complaint in *Kowalski* v. *Chandler, supra*, were discussed in the opposing briefs submitted to the Court of Appeals for the Sixth Circuit, and the principal issues together with the jurisdictional question were thereafter argued. As the jurisdictional point, alone, was decided, the critical and tremendous importance of the constitutional question raised by the conflict between that Circuit and the Second Circuit as to the scope and the continued vitality of *Federal Baseball Club* v. *National League, supra*, is palpable.

Dated, May 5, 1953.

Respectfully submitted,

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